

Surveillance tapes and the Michigan Library Privacy Act

By Lance Werner

Once in awhile I receive questions about whether or not security tapes or surveillance videos should be considered “library records” under the Michigan Library Privacy Act (the Privacy Act), 1982 PA 455, MCL 397.601 *et seq.* I do not have a definitive answer to this question. However, I would like to discuss the options. The final answer must be determined by the governing board at each of Michigan’s public libraries, preferably in consultation with the library’s legal counsel and included in writing in the library’s policies.

I would be remiss if I did not mention that I am always obligated to maintain the most conservative stance when furnishing information about legal issues.

In order to adequately address this issue it is necessary to review the definition of “library record” in the Privacy Act. Section 2(i) of the Privacy Act, MCL 397.602(i) defines “library record” as:

“Library record” means a document, record, or other method of storing information retained by a library that contains information that personally identifies a library patron, including the patron's name, address, or telephone number, or that identifies a person as having requested or obtained specific materials from a library. Library record does not include non-identifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.

If security tapes are considered as library records they must be kept confidential in accordance with section 3(2) of the Privacy Act, MCL 397.603(2) that provides:

Unless ordered by a court after giving the affected library notice of the request and an opportunity to be heard on the request, a library or an employee or agent of a library shall not release or disclose a library record or portion of a library record to a person without the written consent of the person liable for payment for or return of the materials identified in that library record.

Arguments can be made on both sides of the issue as to whether or not a surveillance tape would be considered as a library record.

One argument is that since the library is a limited public forum, people who enter the library have no expectation of privacy with respect to their physical presence in the library. It can be further argued that a surveillance video does not contain peoples' names, phone numbers, and addresses, and therefore cannot be considered a library record. Creating a surveillance tape may be considered a regular library business

function and hence, disclosure of the tape to authorities would be permissible. This is the same mechanism that permits libraries to give contact information to collection agencies.

However, an alternate argument can be made that the surveillance tape by its very nature contains patron identification information and therefore should be considered a library record under the Privacy Act. If surveillance tapes were in fact library records, it would be a violation of the Privacy Act to release them without permission or court order. It is also notable that there are repercussions for violating section 3 of the Privacy Act.

Section 4 of the Privacy Act, MCL 397.604 states:

A library or an agent or employee of a library that violates section 3 shall be liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or \$250.00, whichever is greater; reasonable attorney fees; and the costs of bringing the action.

So, where does this leave us? The conservative action would be to treat the surveillance tapes as library records and require permission or court order for their disclosure. This course of action insulates the library from potential liability from patron suit and reduces the chance that the evidence contained on the tape would be inadmissible in court because it was wrongfully obtained. Again, this would be the most conservative course and the issue of whether a surveillance tape is in fact a "library record" is not entirely clear.

Although it does not have any direct bearing on this issue, it is notable that the Attorney General of Wisconsin answered this question in an informal opinion and concluded that surveillance tapes were in fact "library records" and as such had to be kept confidential. The Wisconsin situation provides some indirect and limited support to the notion that surveillance tapes may be considered as library records in Michigan.

In any case, the library should have written policies in place which dictate how information will be disclosed or kept confidential in accordance with the Michigan Library Privacy Act. It would be a good idea for a library board to consult its legal counsel in connection with the creation of these types of policies.

Finally, the Library of Michigan, Michigan Department of History, Arts and Libraries lacks authority to give legal advice to any person or agency. The Library of Michigan simply furnishes informational and comment services. The discussion above is intended as an informational service only.

If you have questions or comments regarding this article, please feel free to contact Lance M. Werner, Library Law Specialist at the Michigan Department of History, Arts and Libraries, Library of Michigan. He can be reached at (517) 373-1299 or wernerl@michigan.gov.